

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1733 OF 2003

Employees' State Insurance Corporation
Mumbai & Ors.

...Petitioners.

Vs.

Maharashtra State Bureau of Text Book
Production and Curriculum Research
Pune & Anr.

...Respondents.

....

Mr. H. V. Mehta for the Petitioner.

Mrs.Suhasini Mutalik for Respondent No.1.

Mrs. M.P. Thakur, AGP for Respondent Nos.2

.....

CORAM : F. I. REBELLO AND

DR.D.Y.CHANDRACHUD, JJ.

February 22, 2006.

P.C.

Heard the Learned Counsel for the Petitioner. As there was a demand by the Petitioner on the Respondents for dues under the provisions of the Employees' State Insurance Act, 1948 and the Rules and the Scheme thereunder, the Respondents preferred an application to the Employees' State Insurance Court at Pune. Under Section 75(1)(g) of the Employees State Insurance Act, 1948 in case of a dispute between principal employer and the Corporation in respect of any contribution and benefits already due,

the same can be decided by the Employees' Insurance Court. The Respondents will be the principal employer within the meaning of Section 2(17) of the Act. The Learned Tribunal while considering the issue in para 8, dealt with the question as to whether the Respondent Principal employer was granting the same or similar benefits so as to bring the Respondents within the proviso to Section 1(4) of the Act. The Learned Tribunal proceeded on the footing that as the notification has been issued by the State Government that by itself will be a presumption that the employees are receiving benefits substantially superior to the benefits provided under the provisions of the ESIS Act. In our opinion, that may not be the correct finding of fact. Mere setting out in the notification that the employees are receiving the same or similar benefits by itself would not bring the establishment within the proviso of Section 1(4). There will have to be material before the Tribunal to arrive at the conclusion that in fact the employees of the establishment are getting similar or same benefits.

The Tribunal, however, in para 11 has relied on the letter

Exh.C-19 written by the Assistant Regional Director of the Petitioners herein, at Nagpur which has informed the Mumbai Office of the Petitioners herein, that the employees of the Trust are governed by the rules and regulations which are applicable to the State Government employees and they have parallel medical reimbursement facility. This is a document from the Petitioners themselves setting out that the employees of the Respondents are covered by the provisions of the State Government medical reimbursement facilities. Based upon this document, the Tribunal recorded a finding that the employees of the Respondent Corporation are getting the same or similar benefits as those provided by the Petitioners herein. The plea of the Petitioners that some workers work on daily wages were not getting the benefits, was rejected on the ground that there was no material produced to substantiate that claim. These are purely findings of facts based on material which was on record.

In the light of that we do not find that the order of the Tribunal suffers from any error of law apparent on the face of the record, nor do we find that the findings are perverse or based on irrelevant material. In the light of that, no interference is called for.

The Petition is rejected.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)